

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY	DOCKET NO. DRU-03-4
--	---------------------

DECLARATORY ORDER

(Issued August 1, 2003)

On July 8, 2003, MidAmerican Energy Company (MidAmerican) filed with the Utilities Board (Board) a petition for declaratory order. MidAmerican plans to build in Council Bluffs, Iowa, a coal-fired generating facility known as Council Bluffs Energy Center unit 4 (CBEC-4). MidAmerican states that the construction and operation of CBEC-4 will require improvements to MidAmerican's electric transmission system. The transmission line at issue in the petition for declaratory order is a 161,000-volt line extending westward from CBEC-4 to a substation in Nebraska owned by the Omaha Public Power District. The Iowa portion of this 161 kV line will be located almost exclusively within the city limits of Council Bluffs. However, a portion of the line will apparently be located between Council Bluffs' city limits and the middle of the Missouri River. The question presented by MidAmerican is whether this segment requires an electric line franchise pursuant to Iowa Code § 478.1 and 199 IAC 11.1(5).

Iowa Code § 478.1 provides, in relevant part:

(1) A person shall not construct, erect, maintain, or operate a transmission line, wire, or cable which is capable of operating at an electric voltage of sixty-nine kilovolts or more along, over, or across any public highway or grounds outside of cities for the transmission, distribution, or sale of electric current, without first procuring from the utilities board within the utilities division of the department of commerce a franchise granting authority as provided in this chapter.

(2) A franchise shall not be required for electric lines constructed entirely within the boundaries of property owned by a person primarily engaged in the transmission or distribution of electric power or entirely within the boundaries of property owned by the end user of the electric power.

Subrule 11.1(5) is consistent with the statute and provides that “[a]n electric franchise shall be required for the construction, operation, and maintenance of any electric line which is capable of operating at 69 kilovolts or more outside of cities.”

MidAmerican alleges in its petition that the portion of the electric line located outside of the city limits will be between or below the ordinary high water mark of the Missouri River and the middle of the Missouri River and that the only landowner is the State of Iowa. MidAmerican states that because the Missouri River is a “meandering river,” private landowners only own to the ordinary high water mark of the land. Because construction will take place in or over a riverbed, MidAmerican has been notified that it may have to obtain a “State of Iowa Department of Natural Resources (IDNR) Sovereign Lands Construction Permit” for the placement of the line. If this is true, MidAmerican claims that an additional Board franchise would not be necessary.

Iowa Code § 478.1 is clear that an electric franchise must be obtained for a portion of a line that is 69 kV or more and located outside of cities. The statute contains two exceptions, neither of which is applicable here. First, the line is not located within the boundaries of property owned by MidAmerican, the transmission provider. Second, the line is not located on the property of an end user or customer. This exception applies when, for example, a high voltage line is built to serve a large industrial customer or customers and the line is located on land owned by the customer or customers. The clear language of the statute precludes the interpretation sought by MidAmerican because the land is owned by the State of Iowa and not by a person falling within the statutory exceptions.

The Board notes that it is not unusual for multiple permits to be required for a project. For example, in Chapter 476A, generating certificate proceedings, permits are generally needed at least from the Board, the IDNR, and local governing bodies. In electric line franchise cases, there are instances where a line is constructed entirely on road rights-of-way that are owned by the state, but the Board's franchise process must still be followed. Landowners near the project may have objections or routing concerns even though no additional easement from the landowner is necessary for construction of the line. In the case posed by MidAmerican, landowners located near the project may have routing or other concerns that would be addressed in a franchise proceeding. Although the petition for declaratory ruling does not outline the factors the IDNR considers in its permitting process, presumably these focus on environmental matters and not the routing and engineering concerns

that are addressed by the Board in a franchise proceeding. In addition, the Board can only issue a franchise if it determines pursuant to Iowa Code § 478.4 that “the proposed line or lines are necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.” This is a finding the Board is uniquely qualified and empowered to make and not one that can be deferred to another regulatory body.

The statute only exempts from the franchise process that portion of a line located within city limits, unless one of two narrow exceptions is present. Based on the factual situation posed by MidAmerican in its request, a petition for electric line franchise must be filed with the Board for any portion of the line that is located outside the city limits of Council Bluffs.

IT IS THEREFORE ORDERED:

The petition for declaratory order filed by MidAmerican Energy Company on July 8, 2003, is denied to the extent discussed in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 1st day of August, 2003.